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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

**LYNDA PIPKIN, JANICE LEGLER,
ROBERT MCENTEE, and ELIZABETH
CARLIN,**

Plaintiffs,

v.

**DARYL ACUMEN and GILES
WITHERSPOON,**

Defendants.

**RESPONSE TO PLAINTIFFS' SHORT
FORM DISCOVERY MOTION TO
COMPEL DEFENDANT GILES
WITHERSPOON'S RESPONSES TO
PLAINTIFFS' DISCOVERY REQUESTS**

Case No. 1:18-CV-00113-RJS

Judge Howard C. Nielson
Magistrate Judge Paul M. Warner

In Plaintiffs' Short Form Discovery Motion to Compel Defendant Giles Witherspoon's Responses to Plaintiff's Discovery Requests (the "Short Form Motion"), Plaintiffs contend that they are entitled to discovery of highly sensitive and confidential information regarding Giles Witherspoon-Boyd's ("Witherspoon-Boyd") net worth and financial condition merely because they have requested punitive damages in their complaint.

However, Plaintiffs are not entitled to this information because they have failed to attempt to establish a *prima facie* case on the issue of punitive damages. *See James v. Heuberger Motors, Inc.*, 2011 WL 334473, at * 3 (D. Colo. Jan 28, 2011) (holding that “it is most appropriate to allow discovery of financial information upon a *prima facie* showing that a plaintiff will be entitled to punitive damages should he or she succeed on the merits of his or her claim.”).

It is clear that punitive damages are limited to cases where the defendant’s conduct is outrageous, owing to gross negligence, demonstrates a willful, wanton, and reckless indifference for the rights of others, or demonstrates “behavior even more deplorable.” *See Exxon Shipping Co. v. Baker*, 554 U.S. 471, 493 (2008). In this case, Plaintiffs have failed to even allege in their Amended Complaint, let alone sufficiently establish, that Witherspoon-Boyd’s conduct rises to the level of conduct that warrants punitive damages. Therefore, Plaintiffs are not entitled to discovery of Witherspoon-Boyd’s net worth and financial condition.

Moreover, Plaintiffs’ requests regarding Witherspoon-Boyd’s financial condition and net worth are unduly burdensome and overly broad. The disputed interrogatories and document requests failed to define the word “current”, and thus failed to provide an actual limit as to time and scope of the requests. *See Exhibit B to the Short Form Motion*. In addition, Plaintiffs requested “any and all documents” that fully demonstrate Witherspoon-Boyd’s current net worth. *See id.* This request is overbroad and unnecessary to determine Witherspoon-Boyd’s present financial condition. Witherspoon-Boyd is an individual and not a corporation. As such, any information pertaining to his financial condition and net worth can be obtained through simple questions to Witherspoon-Boyd about his current financial status at trial, if necessary, once the Court has determined that punitive damages are appropriate. Until that point, such requests seek only to

harass and embarrass Witherspoon-Boyd. Discovery of “any and all” documents that demonstrate Witherspoon-Boyd’s net worth is unduly burdensome and unnecessary.

Based upon the foregoing, Plaintiffs’ are not entitled to information regarding Witherspoon-Boyd’s financial condition and net worth. Therefore, Plaintiffs’ Short Form Motion should be denied.

DATED this 23rd day of December, 2019.

CLYDE SNOW & SESSIONS

/s/ Walter A. Romney, Jr. _____

Walter A. Romney, Jr.

Katherine E. Pepin

Attorneys for Defendant Giles Witherspoon-Boyd

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of December, 2019, a true and correct copy of the foregoing **RESPONSE TO PLAINTIFFS' SHORT FORM DISCOVERY MOTION TO COMPEL DEFENDANT GILES WITHERSPOON'S RESPONSES TO PLAINTIFFS' DISCOVERY REQUESTS** was sent via E-Mail to the following:

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